

Message Text

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70

ORIGIN OPIC-12

INFO OCT-01 AF-10 ISO-00 EB-11 AID-20 TRSE-00 L-03 COME-00

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66619

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AF/E:GGAY

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R 242121Z MAY 74

FM SECSTATE WASHDC

TO AMEMBASSY NAIROBI

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E.O. 11652:N/A

TAGS:EFIN

SUBJ: ATWELL DEVELOPMENT CO. AND MARISHAL TEA ESTATE

REF: NAIROBI 4212

1. OPIC HAS NO OBJECTION TO ATWELL APPLYING TO KENYAN GOVERNMENT FOR TRANSFER OF ENTIRE SALE PROCEEDS INTO U.S. DOLLARS. HOWEVER, OPIC WOULD DEFER TO EMBASSY'S VIEWS IF EMBASSY BELIEVES THERE IS GREATER LIKELIHOOD FOR IMMEDIATE TRANSFER OF ENTIRE SALE PROCEEDS IF APPLICATION FOR TRANSFER IS MADE FIRST FOR THE AMOUNT GUARANTEED FOR CONVERSION AND TRANSFER PURSUANT TO CERTIFICATE OF APPROVED INTERPRISE WITH APPLICATION FOR TRANSFER OF BALANCE OF PROCEEDS BEING MADE AT A LATER DATE.

2. SINCE OPIC CONTRACT OF GUARANTY NO. 5715 REQUIRES THAT ATWELL TAKE ALL REASONABLE STEPS TO EFFECT SUCH TRANSFER UNDER EXISTING LOCAL LAWS, ETC., EMBASSY CAN USE THIS REQUIREMENT TO PERSUADE ATWELL TO SURSUE WHATEVER COURSE OF ACTION EMBASSY DEEMS MOST LIKELY TO RESULT IN IMMEDIATE TRANSFER OF

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ENTIRE SALES PROCEEDS INTO U.S. DOLLARS.

3. WOULD APPRECIATE EMBASSY NOTIFYING OPIC IMMEDIATELY AS REGARDS EMBASSY'S RECOMMENDED COURSE OF ACTION TO BE TAKEN BY ATWELL AND RESPONSE OF GOK TO THE APPLICATION FOR TRANSFER.

4. OPIC WOULD APPRECIATE EMBASSY CLARIFYING PARAGRAPHS 1 AND 2 OF REFTTEL. ON AUGUST 24, 1967, DID FOREIGN INVESTMENTS PROTECTION ACT 1964 PERMIT AN INVESTOR TO REPATRIATE FREELY THAT PART OF SALE PROCEEDS REPRESENTING APPRECIATION ON ORIGINAL INVESTMENT OR DID THAT ACT HAVE IN EFFECT ON AUGUST 24, 1967 THE SAME PROVISION IN EFFECT TODAY PERMITTING THE CENTRAL BANK TO DENY IMMEDIATE TRANSFER OF PROCEEDS REPRESENTING APPRECIATION ON A CASE BY CASE BASIS? IF LATTER PROVISION WAS IN EFFECT ON AUGUST 24, 1967 OPIC WOULD APPRECIATE INFORMATION AS TO CENTRAL BANK'S PRACTICES IN PERMITTING TRANSFERS OF SUMS REPRESENTING APPRECIATION ON ORIGINAL INVESTMENT AND IN PARTICULAR THE AVERAGE TIME DELAY IN EFFECTING A COMPLETE TRANSFER.

5. OPIC WOULD APPRECIATE EMBASSY'S VIEW AS TO WHY LAW PERMITTING CENTRAL BANK TO DENY IMMEDIATE TRANSFER OF SALE PROCEEDS REPRESENTING APPRECIATION ON ORIGINAL INVESTMENT MUST BE CONSIDERED A BONA FIDE EXCHANGE CONTROL.

6. OPIC IS SENDING A LETTER TO ATWELL AND EMBASSY SPECIFYING DETAILS OF STEPS TO BE TAKEN BY ATWELL UNDER OPIC CONTRACT IF GOK DENIES TRANSFER OF SALE PROCEEDS REPRESENTING APPRECIATION AND ATWELL DESIRES TO FILE INCONVERTIBILITY CLAIM WITH OPIC. DECONTROL 5/24/74 RUSH

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